

THE SPRINGFIELDER

Vol. XXVII

Spring, 1963

No. 1

THE SPRINGFIELDER is published quarterly by the faculty of Concordia Theological Seminary, Springfield, Illinois, of the Lutheran Church—Missouri Synod.

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Clergy changes of address reported to Concordia Publishing House, St. Louis, Missouri, will also cover mailing change of *The Springfielder*. Other changes of address should be sent to the Business Manager of *The Springfielder*, Concordia Theological Seminary, Springfield, Illinois.

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The Third Use of the Law

HENRY J. EGGOLD

THE QUESTION of the validity of speaking of a third use of the Law, the *usus didacticus*, has been a concern of the Church at least since the time of Johann Agricola. In 1527, Melanchthon published his *Visitation Articles* in which he urged the preaching of the Law to Christians. Agricola considered these Romanizing, contending that the Law "belongs in the court house and on the gallows; that it is to be preached to thieves and murderers, not to honest people, least of all to Christians."¹ In 1537, Agricola published anonymously propositions in which he attacked Luther and Melanchthon on the matter of the use of the Law for Christians. Between December 18, 1537, and September, 1540, Luther published six sets of theses against the Antinomians in which he made, among others, the following points:

First series—The Law produces contrition; the Gospel produces hatred of sin and the good resolve to do good works.

Second series—The Law serves as curb, mirror, and rule.

Third series—The life of the Christian is one of continuous repentance.

Fourth series—It is fallacious to say that because the Law is not necessary to justification, it is not necessary at all.

Fifth series—The Antinomians lead men to carnal security. If you abolish the Law, you must abolish sin and death, and ultimately Christ, the Savior from sin.

Sixth series—September, 1540—The Antinomians destroy all order in the world, human and divine. You can learn neither theology nor civil piety from the Antinomians.²

In 1556, after Luther's death, the Second Antinomian Controversy, which concerned itself specifically with the third use of the Law, developed. Poach, Otto, Neander, and Amsdorf contended that the teaching of the Law has no value for directing Christian conduct. For them the Law belonged to the Kingdom of Moses and of the pope. Flacius, Moerlin, Wigand, and Westphal protested. Article VI of the *Formula of Concord* settled the controversy declaring:

Accordingly we condemn as dangerous and subversive of Christian discipline and true piety the erroneous teaching that the Law is not to be urged, in the manner and measure above described, upon Christians and genuine believers, but only upon unbelievers, non-Christians, and the impenitent.³

In recent times the question of the validity of the third use of the Law has been raised by Werner Elert, in his work *The Christian Ethos*. The following excerpts serve to reflect his thought:

If we mean by the third use that we can listen to the law without its threats, we indulge in pure fiction. There is never

a situation when it does not function as accuser. For that reason we cannot distil an innocuous third use from that social use of the law which weighs upon our conscience.⁴

He says further:

But the new nature which needs to win out over the old is liberated nature which no longer requires the law. In fact it is new only in so far as it is in every respect removed from the law. The dangers of libertinism are not averted when the new man is once more placed under the domination of the law but only when he is "led by the Spirit." "If you are led by the Spirit you are not under the law. . . ." All roads lead to that open space which is no longer restricted and hemmed in by laws. These roads lead into the freedom of the new creature of God, especially when we understand that they originate in God.⁵

A third quotation will suffice:

It [*i.e.*, the law] need no longer drive the regenerate because they do "without instruction, admonition, coercion or impulsion of the law what they ought to do according to God's will. . . ." Note: "without instruction"—the law no longer serves a pedagogical function. . . . In other words, there can be no law for the earthly life of the regenerate which serves purely as information, neither for the old Adam in him or for the actual performance of good works of the law.⁶

In this last quotation, Elert is presuming to give the intended sense of the *Formula of Concord*, VI, 6. However, this writer believes that he neglects to take seriously the fact that the paragraph cited begins with the words: "If believers and the elect children of God were perfectly renewed in this life. . . ." In that case Christians thus perfectly renewed would spontaneously, without instruction, do the will of God. However, since Christians are not thus perfectly renewed, the *Formula* argues that they need the Law in its three uses.

It is the intention of this essay to attempt to demonstrate that a person is in danger of denying the necessity of the third use of the Law for the Christian when he ascribes what is applicable only to the new man to the concretum of the Christian.

It is indeed true that the new man in the Christian needs the Law. He is a free lord and subject to none, and that for two reasons. In the first place, "Christ has redeemed us from the curse of the Law being made a curse for us, for it is written, 'Cursed is every one that hangeth on a tree'" (Galatians 3:13). All of us were by nature under the Law, under its fearful tyranny, under its thralldom as a malevolent power, and under its curse. But "when the fullness of the time was come God sent forth His Son made of a woman, made under the Law, to redeem them that were under the Law" (Gal. 4:4). By his active obedience Christ met the demands

the Law and perfectly fulfilled it for us; by His passive obedience He paid the debt of our transgressions against the Law. In this way Christ has freed us from the Law, from its capacity to hold us captive and to condemn us. This is what Paul means in Roman 10:4 when he says: "Christ is the end of the Law, for righteousness to everyone that believeth." He speaks similarly in Romans 8:3-4, "For what the law could not do in that it was weak in the flesh, God sending his own son in the likeness of sinful flesh and for sin, condemned sin in the flesh, that the righteousness of the law might be fulfilled in us, who walk not after the flesh but after the spirit."

Luther seems quite concerned that the Christian understand the limits of his freedom from Law. He says that through Christ the Law no longer terrifies us with death and hell but has become our kind friend and companion.⁷ Again he says:

The Ten Commandments (which speak of a holy conduct and life before God and men) are at an end so that they cannot condemn us who believe in Christ. . . . However, the Ten Commandments remain in force and are intended for all Christians so far as our obedience to them is concerned. . . .⁸

Again he says:

We are not to understand the setting aside of the Law to mean that we are no longer morally obligated to do anything, that outside the law (*ex legibus*) we may now live just as we please and freely indulge our desires! But the Law is set aside in our hearts, so that it does not accuse us.⁹

The Christian man is free of the Law not only through the gracious work of Christ but also through the regenerating work of the Spirit in his heart. For "where the Spirit of the Lord is, there is liberty" (2 Cor. 3:17). The Scriptures are lavish in describing the work of the Spirit in the heart of man. Paul declares: "If any man be in Christ he is a new creature," literally, a new creation (2 Cor. 5:17). The Apostle gives his own exegesis to the concept of newness when he says: "Wherefore henceforth know we no man after the flesh; yea, though we have known Christ after the flesh, yet now henceforth know we him no more" (2 Cor. 5:16). The Spirit takes away the heart of stone and gives a warm, pulsating heart of flesh (Ezekiel 36:26). The Spirit affects the will of man, for He works in us both to will and to do of God's good pleasure (Phil. 2:13). He causes us to bring forth the fruits of the spirit which, while they are works in the Law, are not done under the Law, but are fruits of the Spirit in us. He makes us sons, for "as many as are led by the Spirit of God, they are the sons of God" (Rom. 8:14). We are no longer slaves who must be driven by the Law as was Cain; but we are sons who delight to do the will of God according to the inward man (Rom. 7:22). On this point the *Formula of Concord* says:

But when a person is born anew by the Spirit of God and is

liberated from the law (that is, when he is free from the driver and is driven by the Spirit of Christ), he lives according to the immutable will of God as it is comprehended in the law and . . . does everything from a free and merry spirit.

In this sense he is not under the Law, but under grace (Rom. 6:14).

In the renewed state, “. . . the same law which formerly was hateful to free will becomes welcome because through the Holy Spirit love has been diffused in our hearts.”¹¹ And the new man does everything from a free and willing spirit. On this point Luther remarks:

The people, however, who are liberated from the law do good and avoid evil regardless of the threatenings and promises of the law or regardless of punishment or reward. They do it with a free, spontaneous spirit, with love of the good and hatred of the evil, because they take delight in God's law. Even if no law had been given, they would not want matter changed but would continue to do good and avoid evil. They are really children of God. Nature cannot accomplish this but the seed of Abraham, Christ, by His blessing, through the grace and the Holy Spirit makes such people.¹²

Faith, says Walther, like a sea that can be tapped, rushes irresistibly through any proper opening that is made for it.¹³

Moreover, that which the new man does is always in harmony with the will of God because the activity of the new man is the work of the Spirit of God within him. Therefore, Paul can write: “The law was not made for the righteous man, but for the lawless and disobedient, for the ungodly and for sinners, for unholy and profane . . .” (1 Timothy 1:9-10). The new man needs no law, neither as norm nor as driver. The *Formula of Concord* declares

If believers and elect children of God were perfectly renewed in this life through the indwelling Spirit in such a way that in their nature and all its power they would be totally free from sins, they would require no law, no driver. Of themselves and altogether spontaneously, without any instruction, admonition, exhortation or driving by the law they would do what they are obligated to do according to the will of God just as the sun, the moon, and all the stars of heaven regularly run their courses according to the order which God instituted for them once and for all, spontaneously and unhindered, without any admonition, exhortation, compulsion, coercion or necessity, and as the holy angels render God completely spontaneous obedience.¹⁴

That is why in heaven we will need neither Law nor Gospel.¹⁵

But our dilemma is precisely this that we are not in heaven that we are not perfectly renewed in this life. In fact, as P

points out, the Christian has not only the new life of the Spirit and in the Spirit, but also the flesh. Paul describes the activity of the flesh in Romans 7:23-24 when he says: "I see another law in my members warring against the law of my mind, and bringing me into subjection to the law of sin which is in my members." In Galatians 5:17, he says: "The flesh lusteth against the spirit and the spirit against the flesh; and these are contrary the one to the other; so that ye cannot do the things that ye would." Francis Pieper notes correctly that the flesh never becomes pious in this life but retains its characteristics throughout the life of the Christian.¹⁶ It is enmity against God (Rom. 8:7). It wars against the new man (Rom. 7:23), attempting, and at times succeeding, to frustrate the work of the Spirit in the Christian. The very power of the flesh led Paul to cry out: "O wretched man that I am, who shall deliver me from the body of this death" (Rom. 7:24). The fact of this duality of the Christian man leads Luther to remark: "A Christian is in two realms at once. So far as he is flesh, he is under the Law; so far as he is spirit, he is under grace."¹⁷

Any view of the Christian man which fails to retain this duality in the person of the Christian is a false view. In his *Der Geist der Lutherischen Ethik*, Paul Althaus declares:

This new Ego, as surely as it is not an abstraction but a here and now reality of the concrete man . . . , is never simply identical with the empirical man. Until death, there will always remain also "flesh," the old man. The sign of the Holy Spirit's presence in man is therefore not the unity of a completely renewed Ego which now need simply run its course as self-evidently as a process in nature, but the sign of the Spirit's presence is precisely the duality, the conflict between the Spirit and man, as far as he is flesh.¹⁸

Just because he also has the flesh, the Christian needs the Law of God in its three uses. "For," as Luther says, "the flesh should not be free but should stay in the grave, in the prison, on the death bed; it should be subject to the Law and should be worked hard by the Egyptians."¹⁹ "We are to drive the Old Man unceasingly by laws and be sure not to grant him any rest from them. Then you have used the law aright and well."²⁰

Because he still has the Old Adam the Christian needs the preaching of Law, first of all, as a curb. Koeberle tells us that when the compelling "motive, 'the love of Christ constraineth us' has no compelling power over us, then the harsh, military order, 'out of obedience' must compel the old nature and assist in its self-conquest."²¹ Koeberle is here reflecting the *Formula of Concord*:

For the Old Adam, like an unmanageable and recalcitrant donkey, is still a part of them and must be coerced into obedience of Christ, not only with the instruction, admonition, urging, and threatening of the law, but frequently also with the

club of punishments and miseries, until the flesh of sin is put off entirely and man is completely renewed in the resurrection.²²

Again, because of the sinful flesh within them, the Christian also need the Law as mirror to reflect their sin, for "otherwise they can easily imagine that their works are good and holy."²³ Bess reminds us that nowhere has the devil more successfully erected chapel than beside the temple of Christian liberty.²⁴ So perverse the flesh that Christian people can be tempted to imagine that because they are told that they are under grace, they can live as they please.²⁵ Therefore, says Luther, before and after we have become Christians, the Law must in this life constantly be *lex occidendi damnans, accusans*, as Paul and many of our books so frequently teach.²⁶ "To reprove is the real function of the law."²⁷ (It is significant to note that when the *Formula* declares that the Law always accuses, it is not intending to say that it *only* accuses, as though this were its sole function. Rather, implicit in the emphasis on the Law as accuser is the antithetical idea that it does not promise a *theologia viatorum*, therefore, cannot dispense with the use of the Law as mirror. Koeberle points to the many times in which the Scriptures remind people of the judgment to come to warn them against carnal security, and then adds significantly:

But when the idea of judgment on the entire attitude of the one who is justified has been maintained, there will be no room for the ancient antinomian misunderstanding which has always accompanied Paulinism and Lutheranism. . . .²⁸

The third use of Law for the Christian man is that of rule. That the Law should have this function should really strike us as self-evident because of the very nature of Law. In its very nature it is given as instruction for one's conduct. Of His Law God says: "What thing soever I command you, observe to do it; thou shalt not add thereto nor diminish from it (Deut. 12:32). We recall, therefore, how in his sermon on the mount and other addresses Jesus gives his commentary on the Law and how the epistles contain large tracts of instruction in the manner in which Christian people are to conduct themselves. "The true works are those expressed in the Ten Commandments."²⁹ The Law is described in the *Formula of Concord* as "the immutable will of God according to which man is to conduct himself in this life."³⁰ Moreover, the *Formula* says: "the true function of the law remains, to rebuke sin and to give instruction unto good works."³¹ And this instruction is intended for the regenerate for God "employs the law to instruct the regenerate out of it and show and indicate to them in the Ten Commandments what acceptable will of God is (Rom. 12:2) and in what good works which God has prepared beforehand, they should walk (Eph. 2:10)."³² With a characteristic sense for discrimination Ho says:

But the conscience of the renewed (1 Cor. 4:4) is discarded as a primary and simply infallible rule; much more the dictates of right reason, and the law of nature, though the former may have authority as a secondary norm, so far as it applies the divine law to a particular or single action and shows that it is to be done in the one case and in the other. Even the Gospel is not the norm or directive principle for good works, but rather a *conferring* principle (because it confers the Holy Spirit, through whose impulses, and communication of strength and co-operation, we do good), and productive (because it produces faith, the basis of every good action).³³

¶ *The Formula of Concord* advances the following reason for the necessity for the third use of the Law:

Believers, furthermore, require the teaching of the Law so that they will not be thrown back on their own holiness and piety and under the pretext of the Holy Spirit's guidance set up a self-elected service of God without his Word and command, as it is written: "You shall not do every man whatever is right in his own eyes, but heed all these words which I command you. You shall not add to it nor take from it."³⁴

How great the propensity of man is to devise his own system of morality none knew better than Luther. He himself had tried to find peace of conscience by following humanly devised regulations. Against the background of his own experience he writes: "Apart from these Ten Commandments no deed, no conduct can be good or pleasing to God, no matter how great and precious it may be in the eyes of the world."³⁵ Again he says: "It will be a long time before men produce a doctrine or a social order equal to that of the Ten Commandments."³⁶ And the Christian uses the Law as guide for his conduct. He thanks God that He has revealed His will so that with the aid of the Holy Spirit he may seek to conform his life to it. Free from the coercion of the Law, he nevertheless seeks to live in the Law because, according to the new man, his delight is in the Law of the Lord.

However, it ought to be noted that the Law is not a book of casuistry. Although it lays down norms for conduct, it does not provide a specific, clearly defined rule to cover every situation in the Christian life. This is another way of saying that the royal law is the law of love. Every experienced pastor knows that cases arise in which nothing else can decide except the law of love.

I can find no better way of concluding than to quote by way of summary from Luther's sermon on the distinction between Law and Gospel of 1532:

It is true that the Law or Ten Commandments have not ceased for us in the sense that we are free of them so that we no longer need them. (For Christ has freed us from the curse of the law, not from obedience to it.) No, God does not want

that, but rather that with all diligence and seriousness you should keep them; but, as we have done so, not to trust in it, nor when we have failed to keep it, to doubt. See to it, therefore, that you do not give to the Law more than its due; otherwise you will lose the Gospel. Also, you should not regard the Gospel in such a way that the Law perishes. But let each one remain in its own circle.³⁷

FOOTNOTES

1. C. F. W. Walther, *The Proper Distinction Between Law and Gospel* translated from the German of 1897 by W. H. T. Dau (St. Louis: Concordia Publishing House, 1929), p. 96.
2. Martin Luther, "D. Martin Luthers Widerlegung der falschen u verführischen Lehre der Antinomer wider das Gesetz," *Saemmtlic Schriften*, edited by John George Walch (St. Louis: Concordia Publishing House, 1885), XX, 1622-1849. Hereafter this edition is cited as *St. L.*
3. "The Formula of Concord: Epitome," *The Book of Concord*, edited Theodore G. Tappert (Philadelphia: Muhlenberg Press, 1959), VI.
4. Werner Elert, *The Christian Ethos*, translated from the German by C. J. Schindler (Philadelphia: Muhlenberg Press, 1957), p. 298.
5. *Ibid.*, p. 234.
6. *Ibid.*, pp. 298 f.
7. Martin Luther, *Werke* (Weimar: Hermann Boehlau, 1910), X, I, 4. Hereafter this work is cited as WA.
8. *Ibid.*, XLVI, 569.
9. *Ibid.*, XL, III, 631.
10. "The Formula of Concord: Solid Declaration," *The Book of Concord* edited by Theodore G. Tappert (Philadelphia: Muhlenberg Press, 1959), VI, 17. Hereafter this work is cited as FC, SD.
11. Luther, WA, II, 560.
12. *Ibid.*, X, I, 360.
13. Walther, *op. cit.*, p. 293.
14. FC, SD, VI, 6.
15. *Ibid.*, VI, 24.
16. Francis Pieper, *Christian Dogmatics*, translated from the German by W. F. Albrecht (St. Louis: Concordia Publishing House, 1953), I, 240.
17. Luther, *St. L.*, IX, 452 f.
18. Paul Althaus, *Der Geist der lutherischen Ethik*, p. 29, quoted in Edmund Schlink, *Theology of the Lutheran Confessions*, translated from the German by Paul F. Koehneke and Herbert J. A. Bouman (Philadelphia: Muhlenberg Press, 1961), p. 109, n. 2.
19. Luther, WA, XL, I, 270 f.
20. *Ibid.*, XVII, I, 122.
21. Adolf Koeberle, *The Quest for Holiness*, translated from the German by John C. Mattes (New York and London: Harper and Bros., 1936), p. 163.
22. FC, SD, VI, 24.
23. *Ibid.*, VI, 21.
24. W. Besser, *Bibelstunde*, quoted in Ewald Plass, *What Luther Says* (St. Louis: Concordia Publishing House, 1959), II, 778, n. 2.
25. Luther, WA, XL, II, 60.
26. *Ibid.*, LI, 440.
27. FC, SD, VI, 14.
28. Koeberle, *op. cit.*, p. 166.

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29. "Apology of the Augsburg Confession," *The Book of Concord*, edited by Theodore G. Tappert (Philadelphia: The Muhlenberg Press, 1957), XII, 145.
 30. *FC, SD, VI, 15.*
 31. *Ibid., V, 18.*
 32. *Ibid., VI, 12.*
 33. M. David Hollaz, *Examinis Theologici Acroamatici*, p. 1192, quoted in Heinrich Schmid, *The Doctrinal Theology of the Evangelical Lutheran Church*, translated from the German and Latin by Charles A. Hay and Henry E. Jacobs (Philadelphia: Lutheran Publication Society, 1899), P. 495.
 34. *FC, SD, VI, 20.*
 35. "The Large Catechism of Dr. Martin Luther," *The Book of Concord*, edited by Theodore G. Tappert (Philadelphia: Muhlenberg Press, 1959), 311.
 36. *Ibid., 317.*
 37. Martin Luther, *Sämmtliche Werke* (Erlanger: Carl Heyder, 1829), XIX, 244.